

REMARKS

Allowed Claims

The Applicant thanks the Examiner for the indication that claims 15-23, 41-43, 51, 52, 65, 67, 71 and 73 have been allowed.

Withdrawn Claims

Claim 39 has been withdrawn. However, claim 39 depends from allowed claim 73, and is therefore subject to reinstatement. The Applicant therefore respectfully requests reinstatement of withdrawn claim 39.

Claim Rejections – 35 USC §102 and §103

Claim 50 has been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,599,086 to Doty. Additionally, claims 45 and 46 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Doty, and claim 40 has been rejected as being unpatentable over Doty in view of U.S. Patent No. 6,042,582 to Ray.

It is well established that “an invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim.” Richardson v. Suzuki Motor Co. Ltd., 9 USPQ.2d 1913, 1920 (Fed. Cir. 1989).

Claim Amendments

Independent claim 46 has been rewritten to depend from allowed independent claim 73, and dependent claim 45 has been amended to promote clarity. Additionally, dependent claim 40 has been amended to depend from allowed independent claim 73 and has been amended to conform to the antecedent basis established in independent claim 73. Claims 40, 45 and 46 therefore depend from allowed independent claim 73 and are submitted to be in condition for allowance. Accordingly, allowance of claims 40, 45 and 46 is respectfully requested.

Independent Claim 50

Independent claim 50 recites, among other elements and features, that “said elongated driver shaft is threadedly engaged with said stem portion”. The Office Action asserts that the wrench 32 comprises an elongated driver shaft. Even assuming arguendo that the wrench 32 could be construed as an elongated driver shaft and that the prosthesis 12 could be construed as a stem portion, the wrench 32 is clearly not in any way “threadedly engaged” with the prosthesis

12, as recited in independent claim 50. Indeed, the only contact between the wrench 32 and the prosthesis 12 is the engagement of the gear head 34 with the gear teeth 26 on the pins 20. However, the intermeshing engagement between the gear head 34 and the gear teeth 26 clearly does not constitute threading engagement between the wrench 32 and the prosthesis 12. Furthermore, the Office Action does not set forth any grounds or basis as to how the wrench is in any way “threadedly engaged” with the prosthesis 12. Accordingly, a *prima facie* case of anticipation has not been established with regard to independent claim 50.

Since Doty fails to disclose each of the elements and features recited in independent claim 50, the assertion that Doty anticipates independent claim 50 is improper. Accordingly, withdrawal of the rejection of independent claim 50 and allowance of the same is requested.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that Applicant's application is in condition for allowance with pending claims 15-23, 39-43, 45, 46, 50-52, 65, 67, 71 and 73.

Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 

Brad A. Schepers
Reg. No. 45,431
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6334 voice